

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

IN RE: SMITH & NEPHEW
BIRMINGHAM HIP RESURFACING
(BHR) HIP IMPLANT PRODUCTS
LIABILITY LITIGATION

SARAH MONTAGUE,

Plaintiff,

v.

SMITH & NEPHEW, INC.,

Defendant.

MDL No. 2775

Master Docket No. 1:17-md-2775

JUDGE CATHERINE C. BLAKE

**DIRECT-FILED SHORT FORM
COMPLAINT PURSUANT TO
CASE MANAGEMENT ORDER
NO. 5**

Civil Action No.:

SHORT FORM COMPLAINT

1. Plaintiff, Sarah Montague, states and brings this civil action in MDL No. 2775, entitled *In re: Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation*. Plaintiffs are filing this Short Form Complaint pursuant to CMO No. 5, entered by this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff is a resident and citizen of San Francisco, CA and claims damages as set forth below.

3. Plaintiff's Spouse _____ is a resident and citizen of _____ and claims loss of consortium damages as set forth below.

4. The Federal jurisdiction is proper based on diversity of citizenship.

5. The Federal District in which Plaintiff's initial implant took place: Northern District of California.

6. The Federal District in which Plaintiff's revision(s) surgeries took place:
Northern District of California.

7. Plaintiff brings this action *[check the applicable designation]*:

 X On behalf of [himself/herself];

~~_____ In a representative capacity as the _____ of the
_____ having been duly appointed as the _____ by the
_____ Court of _____. A copy of the Letters of
Administration for a wrongful death claim is annexed hereto if such letters are required
for the commencement of such a claim by the Probate, Surrogate or other appropriate
court of the jurisdiction of the decedent. [Cross out if not applicable.]~~

FACTUAL ALLEGATIONS

8. On or about January 8, 2008, Plaintiff underwent surgery during which the Smith & Nephew BHR Resurfacing System was implanted into Plaintiff's Right hip.

9. Plaintiff's Right BHR implant surgery was performed at Kaiser Permanente San Rafael Medical Center in San Rafael, California by Dr. Richard T. Fong.

10. Plaintiff underwent medically-indicated revision of the Right BHR hip implant on or about November 18, 2016.

11. Plaintiff suffered the following complications, injuries, and/or indications, some or all of which made revision surgery medically necessary: significant elevations of cobalt and chromium; popping/grinding; stiffness and pain.

12. Plaintiff's revision surgery was performed by Dr. Curtis Alan Kiest at SFO-Hospital in San Francisco, California.

13. Plaintiff adopts the allegations of the Master Amended Consolidated Complaint (“MACC”) filed August 4, 2017, and all amendments to the MACC.

14. Notwithstanding the foregoing, Plaintiff does not adopt the following paragraphs of the MACC:_____.

15. Notwithstanding the foregoing, Plaintiff additionally alleges that:

ALLEGATIONS AS TO INJURIES

16. (a) Plaintiff claims damages as a result of (check all that are applicable):

- X INJURY TO HERSELF/HIMSELF
- INJURY TO THE PERSON REPRESENTED
- WRONGFUL DEATH
- SURVIVORSHIP ACTION
- ECONOMIC LOSS

(b) Plaintiff’s spouse claims damages as a result of (check all that are applicable):

- LOSS OF SERVICES
- LOSS OF CONSORTIUM

17. Defendant, by its actions or inactions, proximately caused the injuries to Plaintiff(s).

DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

18. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference under the laws of the following state (check all that are applicable):

 X COUNT I (strict products liability: California)

 X COUNT II (negligence: California)

 X COUNT III (strict products liability failure to warn: California)

 X COUNT IV (negligent failure to warn: California)

 X COUNT V (negligent misrepresentation: California)

 X COUNT VI (negligence per se: California)

 X COUNT VII (breach of express warranties: California)

 X COUNT VIII (manufacturing defect: California)

 X COUNT IX (punitive damages: California)

In addition to the above, Plaintiff(s) assert the following additional causes of action under applicable state law:

PRAYER FOR RELIEF

WHEREFORE, Plaintiff(s) pray for judgment against Defendant as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;

3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement; and
7. All other relief as the Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

DATED: January 19, 2018

Respectfully submitted,

By: /s/ Thomas J. Preuss

Thomas J. Preuss MO #54923

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Attorney for Plaintiff

Certificate of Service

The undersigned hereby certifies that on the 19th day of January, 2018, I electronically filed the foregoing with the clerk of the Court by using CM/ECF. Notice of this filing will be sent by e-mail to all parties by operations of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic filing. Parties may access this filing through the Court's CM/ECF system.

/s/ Thomas J. Preuss

Attorney for Plaintiff